Jurisdiction of Traffic Offenses Committed by Juveniles

1

In this chapter. . .

This chapter contains brief discussion of the types of traffic offenses and a court's authority to act when a juvenile has allegedly committed a traffic offense. Although this chapter discusses jurisdiction of civil infractions committed by minors, the procedures governing such cases are not discussed in this benchbook. Required procedures in civil infraction actions are discussed in *Traffic Benchbook—3d Edition,* Volume 1, Chapter 1.

1.1 Types of Traffic Offenses

Traffic violations may be designated as either civil infractions or criminal offenses (misdemeanors or felonies). Unless declared to be a civil infraction or felony by the Motor Vehicle Code, MCL 257.1 et seq., or other state law, violations of the Motor Vehicle Code are misdemeanors. MCL 257.901(1). Note that some criminal traffic offenses appear in the Penal Code, MCL 750.1 et seq.*

*For the statutory elements of selected criminal traffic offenses, see Chapter 6.

"'Civil infraction' means an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered." MCL 600.113(1)(a). MCL 257.6a of the Motor Vehicle Code similarly defines a civil infraction as "an act or omission prohibited by law which is not a crime as defined in [MCL 750.5], and for which civil sanctions may be ordered."

A civil infraction need only be proved by a preponderance of the evidence. MCL 600.113(3), MCL 257.746(4), and MCL 257.747(5). Penalties for civil infractions include civil fines, costs, assessments, court-ordered treatment programs, and education or rehabilitation programs. A finding of responsibility for a civil infraction is reported to the Secretary of State and appears on the juvenile's "master driving record" rather than his or her delinquency record.

A civil infraction shall not be considered a lesser-included offense of a criminal offense. MCL 257.907(1).

A "crime" is an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by imprisonment and/or a penal fine. MCL 750.5. See MCL 750.7–750.9 (definitions of felony and misdemeanor).

*See Chapter 5 for a discussion of records.

A finding that a juvenile has committed an offense that would be a criminal offense were it committed by an adult appears on the juvenile's delinquency record maintained by the court and Department of State Police and his or her "master driving record" maintained by the Secretary of State.*

1.2 Jurisdiction of Civil Infractions

The Family Division of Circuit Court has "exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age" who is charged with violating any municipal ordinance or state or federal law. MCL 712A.2(a)(1). This provision supersedes provisions of the Revised Judicature Act that assign district courts and municipal courts jurisdiction of civil infraction actions, MCL 600.8301(2) and MCL 600.8703(2). On the other hand, provisions of the Motor Vehicle Code, court rules governing procedure in "juvenile court," and case law preclude the Family Division from exercising jurisdiction over a juvenile accused of a *traffic* civil infraction. MCL 257.741(5), in the Motor Vehicle Code, states in part:

> "If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court without the necessity of appointment of a guardian or next friend. The courts listed in subsection (2) shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult."

MCL 257.741(2)(a)–(c) list district and municipal courts as having jurisdiction of civil infractions.

Under MCR 3.903(B)(3), an "offense by a juvenile" includes an act that violates "a traffic law." In *Welch v District Court,* 215 Mich App 253, 256–57 (1996), the Court of Appeals cited MCL 257.741(5) and MCR 5.903(B)(4), the predecessor to MCR 3.903(B)(3). The prior court rule explicitly excluded traffic civil infractions from the definition of "offense by a juvenile." The Court of Appeals held that the district or municipal court, not the "juvenile court," has jurisdiction of traffic civil infractions committed by minors.

Jurisdiction of civil infraction actions may be determined by agreement between the Family Division and a district or municipal court. MCL 712A.2(a)(1) states in relevant part that "[i]f the court enters into an agreement under section 2e of this chapter, the court has jurisdiction over a juvenile who committed a civil infraction as provided in that section." MCL 712A.2e(1)–(2), in turn, state as follows:

> "(1) The court may enter into an agreement with any or all district courts or municipal courts within the court's geographic jurisdiction to waive jurisdiction over any or all civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction.
>
> "(2) For a civil infraction waived under subsection (1) committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. The court has jurisdiction over juveniles who commit any other civil infraction."

District court or municipal court judges may also be assigned to sit as Family Division judges to hear matters involving juveniles. MCL 600.1517, MCL 600.225, and MCR 8.110(C)(3)(g).

Problems may arise in jurisdictions where no agreement exists. If a juvenile is charged with a misdemeanor traffic offense and a civil infraction, or if the juvenile is charged with a misdemeanor traffic offense and is allowed to plead to a civil infraction (e.g., a juvenile charged with reckless driving pleads to careless driving), it is unclear how the "juvenile court" should proceed. If the juvenile is charged with a misdemeanor but pleads to a civil infraction, a new citation for the civil infraction may be issued to the juvenile, who must then follow the required procedures in municipal or district court. The "juvenile court" may then dismiss the misdemeanor citation.

1.3 Jurisdiction of Criminal Traffic Offenses

MCL 712A.2(a)(1) states in part that the Family Division has the following jurisdiction:

> "(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

> "(1) . . . the juvenile has violated any municipal ordinance or law of the state or of the United States."

MCL 712A.11(4) states that "[i]f the juvenile attains his or her seventeenth birthday after the filing of the petition, the court's jurisdiction shall continue beyond the juvenile's seventeenth birthday and the court may hear and dispose of the petition under [the Juvenile Code]." A juvenile is "found within the county" where the offense occurred or where the juvenile is physically present at the time the petition is filed. MCR 3.926(A).

A "juvenile" is defined in MCR 3.903(B)(2) as "a minor alleged or found to be within the jurisdiction of the court because of having committed an offense." Under MCR 3.903(B)(3), an "offense by a juvenile" includes an act that violates a criminal statute, a criminal ordinance, or a traffic law. Note, however, that proceedings under the Juvenile Code are not criminal proceedings. MCL 712A.1(2).

The Holmes Youthful Trainee Act, MCL 762.11 et seq., must not be applied to an otherwise eligible offender who is charged with a criminal violation of the Motor Vehicle Code or a substantially corresponding local ordinance. MCL 762.11(2)(c) and (4)(b) and *People v Martinez,* 211 Mich App 147, 149–52 (1995).

1.4 Permitted Procedures When a Juvenile Is Charged With a Traffic Offense

*See Chapter 3 for a detailed discussion of the permitted procedures.

When a juvenile is accused of violating a provision of the Motor Vehicle Code, the procedures in MCL 712A.2b of the Juvenile Code apply. However, in cases involving other traffic offenses, the procedures governing delinquency cases may apply.*

As noted in Section 1.2, above, a provision of the Motor Vehicle Code states that when a minor is charged with a civil infraction, the court with jurisdiction "may proceed in the same manner and in all respects as if that individual were an adult." MCL 257.741(5). This strongly suggests that the rules of civil procedure applicable to civil infractions apply, regardless of whether a juvenile is involved. See MCR 4.101 and MCL 257.741–257.750, which are discussed in *Traffic Benchbook—Third Edition,* Volume 1, Chapter 1.

However, in those Family Division courts that have jurisdiction of traffic civil infractions pursuant to an agreement under §2e of the Juvenile Code, it is unclear whether the general rules for civil infractions apply, or whether §2b of the Juvenile Code applies. The procedures listed in §2b of the Juvenile Code must be followed when a juvenile is charged with a violation of the Motor Vehicle Code or a local ordinance substantially corresponding to a provision of the Motor Vehicle Code. Most traffic civil infractions are contained in the Motor Vehicle Code or a local ordinance corresponding to a

provision of the Motor Vehicle Code. The procedures in §2b of the Juvenile Code may govern traffic civil infractions adjudicated in the Family Division pursuant to an agreement under §2e of the Juvenile Code.

1.5 Venue and Transfer of Case From County Where Offense Occurred to County Where Juvenile Resides

Under the Juvenile Code, venue is proper where the offense occurred or where the juvenile is physically present at the time a petition is filed. MCL 712A.2(a) and (d) and MCR 3.926(A).

If any juvenile is brought before the Family Division in a county other than the county in which he or she resides, the court may, before a hearing and with the consent of the court in the juvenile's county of residence, enter an order transferring jurisdiction over the matter to the court of the county of residence.* If the juvenile's county of residence is a "county juvenile agency," then the consent of the court of the juvenile's county of residence is not required. MCL 712A.2(d) and MCL 712A.1(1)(b). The order and a certified copy of the record of any proceedings in the case must be delivered to the court of the county of residence without charge. MCL 712A.2(d) and MCR 3.926(F). MCR 3.926(B) adds that transfer must occur before trial.

For further discussion of this procedure, see Miller, *Juvenile Justice Benchbook (Revised Edition)* (MJI, 2003), Section 2.15.

MCR 3.926(C) provides that when disposition is ordered by a Family Division other than the Family Division in a county where the juvenile resides, the court ordering disposition is responsible for any costs incurred in connection with the order unless:

- the court in the county where the juvenile resides agrees to pay such dispositional costs, or
- the juvenile is made a ward of the state pursuant to the Youth Rehabilitative Services Act, MCL 803.301 et seq., and the county of residence withholds consent to transfer of the case.

1.6 Court Rules Applicable to Cases Under the Juvenile Code

MCR 3.901(A) states as follows:

> "(1) The rules in [Subchapter 3.900], in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.
>
> "(2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides."

MCR 3.902(A) states that these applicable court rules "are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties."

Taking Custody of a Juvenile and Investigating a Criminal Traffic Offense

2

In this chapter. . .

This chapter outlines the steps a law enforcement officer must take when he or she investigates a criminal traffic violation by a person under 17 years of age. It contains the rules governing when a juvenile may be taken into custody under the Motor Vehicle Code, the Liquor Control Code, the Juvenile Code, and the Michigan Court Rules. The chapter also contains discussion and "best practice" suggestions for investigating alleged "drunk driving" offenses committed by juveniles. Please note that this chapter does not contain a complete discussion of the rules governing investigation of "drunk driving" offenses: it only contains discussion of rules that are relevant when a juvenile is suspected of committing such an offense. For a more complete discussion, see *Traffic Benchbook—Third Edition*, Volume 3, Chapter 2.

2.1 Investigative Stops

The federal and Michigan constitutions grant all persons the right to be secure against unreasonable searches and seizures. US Const, Am IV, and Const 1963, art 1, §11. The search and seizure protections of the Fourth Amendment to the federal constitution have been extended to minors. *New Jersey v TLO,* 469 US 325, 333 (1985).

Brief investigative stops short of arrest are permitted where police have a reasonable suspicion of ongoing criminal activity. The criteria for a constitutionally valid investigative stop are that the police have "a particularized suspicion, based on an objective observation, that the person stopped has been, is, or is about to be engaged in criminal wrongdoing." *People v Peebles*, 216 Mich App 661, 665 (1996), citing *People v Shabaz*, 424 Mich 42, 59 (1985). "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion,* 452 Mich 92, 98 (1996). A totality of the circumstances test is used in cases involving investigative stops. *People v Christie* (*On Remand*), 206 Mich App 304, 308 (1994), citing *Terry v Ohio*, 392 US 1 (1968) and *People v Faucett*, 442 Mich 153, 168 (1993).

In *People v Whalen*, 390 Mich 672, 682 (1973), the Michigan Supreme Court articulated the following rules regarding the stopping, searching, and seizing of motor vehicles and their contents:

- Reasonableness is the test that is to be applied for both the stop and search of motor vehicles.
- Reasonableness will be determined from the facts and circumstances of each case.
- Fewer foundation facts are needed to support a finding of reasonableness when moving vehicles are involved than if a house or home were involved.
- An investigatory stop of a vehicle may be based upon fewer facts than needed to support a finding of reasonableness where both a stop and a search is conducted by police.

Police may properly stop a vehicle for an observed defective equipment violation. *People v Rizzo,* 243 Mich App 151, 156 (2000).

In *Christie, supra*, the Court of Appeals expressed the general principle that erratic driving can give rise to a reasonable suspicion of unlawful intoxication that justifies an investigatory stop by police. Applying this principle, the Court upheld the stop of a vehicle seen swerving, driving on the lane markers, and operating for two-tenths of a mile with its turn signal flashing. In this case, the Court held that the stop was "a minimal intrusion of defendant's Fourth Amendment rights in light of defendant's potential danger to the public." 206 Mich App at 310.

See also *Peebles, supra*, in which the Court of Appeals upheld the investigatory stop of a vehicle traveling without headlights in a parking lot at 3:30 a.m., finding the circumstances sufficient to give rise to a reasonable suspicion of careless driving or theft.

Following a proper investigative stop of an automobile, a law enforcement officer is "permitted to briefly detain the vehicle and make reasonable inquiries aimed at confirming his [or her] suspicions." *People v Yeoman,* 218 Mich App 406, 411 (1996), citing *People v Nelson,* 443 Mich 626, 637 (1993).

Police are not required to give *Miranda* warnings to persons whose vehicles have been pulled over in an investigative stop. The *Miranda* safeguards apply only after a person is in custody for an offense. *People v Chinn*, 141 Mich App 92, 96 (1985).

A police officer may ask a motorist to exit his or her vehicle and perform roadside sobriety tests solely on the basis of a strong odor of intoxicants on the motorist's breath. *Rizzo, supra* at 152. In *Rizzo,* a Michigan State Police trooper stopped defendant's car for a defective equipment violation (broken taillight). The trooper approached the vehicle and asked defendant for her

license, registration, and proof of insurance. While defendant explained to the trooper how her taillight had been broken, the trooper detected a strong odor of intoxicant's on defendant's breath. The trooper asked defendant to get out of her car and perform sobriety tests, which defendant performed poorly. The trooper then asked defendant to submit to a preliminary chemical breath analysis (PBT); defendant registered a 0.11 on the PBT. Defendant was then arrested. *Id.* at 152–53. On appeal, the Court of Appeals stated that when a police officer has stopped a motorist for a suspected law violation unrelated to drunk driving, the requirements for a valid investigative stop must be applied to the officer's decision to ask the motorist to perform sobriety tests. *Id.* at 156–57, relying on *People v Burrell,* 417 Mich 439, 456–57 (1983). The Court held that a strong odor of intoxicants provides the requisite "reasonable suspicion" to instruct a motorist to perform field sobriety tests:

> "A police officer need not suspect that a motorist's blood alcohol content is above or below a certain numerical limit before conducting roadside sobriety tests. Rather, he merely must have a reasonable suspicion that the motorist has consumed intoxicating liquor, which may have affected the motorist's ability to operate a motor vehicle. In order to confirm or dispel such reasonable suspicions, we hold that a police officer may instruct a motorist to perform roadside sobriety tests." *Rizzo, supra* at 161.

2.2 Taking a Juvenile Into Custody Under the Motor Vehicle Code

Under the Motor Vehicle Code, a law enforcement officer's authority to take a juvenile into custody is limited. However, as explained in Section 2.3, a law enforcement officer has broad authority under the Juvenile Code and related court rules to take a juvenile into custody following an alleged traffic offense.

The Motor Vehicle Code prohibits a law enforcement officer from taking a person into custody for committing a traffic civil infraction. Instead, a police officer may "stop the person, detain the person temporarily for purposes of making a record of vehicle check," and issue a citation. MCL 257.742(1).*

*See Section 3.4 for further discussion of citations.

For most misdemeanor offenses, a juvenile is not required to be taken into custody. MCL 257.728(1) states:

> "When a person is arrested without a warrant for a violation of this act punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of this act and punishable as a misdemeanor, under conditions not referred to in section 617, 619, or 727, the arresting officer shall prepare, as soon as possible and as completely as possible, an original and 3 copies of a written citation to appear in court containing the name and address of the

> person, the violation charged, and the time and place when and where the person shall appear in court. The officer shall inform the offender of the violation and shall give the second copy of the citation to the alleged offender. If the person arrested demands, he or she shall be arraigned by a magistrate or probate court as provided in section 727 in lieu of being given the citation."

Thus, unless the circumstances fall under §§617, 619, or 727 of the Motor Vehicle Code, or unless the juvenile demands to be "arraigned" immediately in the "juvenile court," he or she may be issued a citation alleging a misdemeanor and released. If the circumstances fall under §§617, 619, or 727 of the Motor Vehicle Code, or if the juvenile demands to be "arraigned" immediately, he or she must be taken before the Family Division of Circuit Court in the county where the offense was allegedly committed. MCL 257.727.

A. Following an Accident

*See Chapter 6 for a description of offenses contained in §625 of the Motor Vehicle Code.

Sections 617 and 619 of the Motor Vehicle Code, MCL 257.617 and 257.619, outline the requirements of drivers involved in accidents. These statutes require a driver to remain at the accident scene (if safe) and provide information and reasonable assistance. A police officer may arrest a person without a warrant following an accident if the officer has reasonable cause to believe that, *at the time of the accident,* the driver was violating MCL 257.625 ("drunk driving" offenses) or a local ordinance substantially corresponding to §625. MCL 257.625a(1)(a).* The police officer does not have to witness the violation or accident.

B. For Certain Serious Offenses

MCL 257.727 allows for persons, including minors, to be arrested without a warrant and taken before a court in the following circumstances:

- where the person is charged with negligent homicide;

- where the person is charged with one of the following offenses:*

  — driving under the influence of alcoholic liquor and/or a controlled substance, MCL 257.625(1)(a) (OWI), or a local ordinance substantially corresponding to this section;

  — driving with an unlawful bodily alcohol content, MCL 257.625(1)(b) (OWI), or a local ordinance substantially corresponding to this section;

  — driving while visibly impaired, MCL 257.625(3) (OWVI), or a local ordinance substantially corresponding to this section;

  — driving under the influence of alcoholic liquor and/or a controlled substance, while visibly impaired, or with any amount of a controlled substance in the body (OWI or OWVI) causing death, MCL 257.625(4); or

  — driving under the influence of alcoholic liquor and/or a controlled substance, while visibly impaired, or with any amount of a controlled substance in the body (OWI or OWVI) causing serious impairment of a body function, MCL 257.625(5);

  — driving with any bodily alcohol content if the person is under age 21, MCL 257.625(6), or a local ordinance substantially corresponding to this section; or

  — driving with any amount of certain controlled substances in the body, MCL 257.625(8), or a local ordinance substantially corresponding to this section;

- where the person is charged with reckless driving, in violation of MCL 257.626, unless it appears that release of the driver will not constitute a public menace; or

- where the person does not have in his or her immediate possession a valid operator's license, chauffeur's license, or a receipt for a surrendered license issued pursuant to MCL 257.311a, unless "the arresting officer otherwise satisfactorily determines the identity of the person and the practicability of subsequent apprehension" if the person fails to appear.

*See Chapter 6 for a description of some of these offenses.

MCL 257.625a(1)(b) provides for warrantless arrest of a person for an alleged drunk driving violation even though the officer did not witness the alleged violation. That section allows for warrantless arrest where:

> "The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 625 or a

> local ordinance substantially corresponding to section 625."

2.3 Taking a Juvenile Into Custody Under the Juvenile Code

MCL 712A.14, MCR 3.933, and MCR 3.934 set forth the procedures to follow when taking a juvenile into temporary custody and when "lodging" or detaining a juvenile pending a preliminary hearing in the Family Division. The decision to detain a juvenile pending a preliminary hearing in a delinquency case is one only the court can make. See MCR 3.903(B)(1) (detention means court-ordered removal of a juvenile from parental custody pending a hearing or further order). These procedures apply whenever a juvenile has committed an "offense." Under MCR 3.903(B)(3), "offense by a juvenile" includes a violation of a traffic law.

The so-called "immediacy rule" is contained in MCL 764.27. That statute states in relevant part:

> "Except as otherwise provided in [MCL 600.606*], if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child as provided in [the Juvenile Code]."

*MCL 600.606 allows a prosecuting attorney to file a criminal complaint in district court instead of filing a petition in the Family Division. This statute applies only to certain serious non-traffic offenses.

Police officers may stop at the police station to complete booking procedures, type a delinquency petition, and, as required by statute, fingerprint the juvenile. *People v Hammond,* 27 Mich App 490, 493–94 (1970), *People v Coleman,* 19 Mich App 250, 253–54 (1969), overruled on other grounds 41 Mich App 116 (1972), and *People v Morris,* 57 Mich App 573, 575–76 (1975). MCL 28.243(1) requires the police to take the fingerprints of a juvenile arrested for an offense that if committed by an adult would be a felony, criminal contempt of court, or a misdemeanor punishable by 93 days' incarceration or more.

A. Obligations of Officer Immediately After a Juvenile Is Taken Into Custody

MCL 712A.14(1) provides that a police officer, sheriff, deputy sheriff, county agent, or probation officer may, without a court order, take into custody any juvenile who is found violating any law or ordinance or whose surroundings are such as to endanger the juvenile's health, morals, or welfare. After apprehending the juvenile, the officer or agent must immediately attempt to notify the juvenile's parent or parents, guardian, or custodian. While awaiting arrival of the parent or parents, guardian, or custodian, the juvenile must not

be held in a detention facility unless the juvenile can be isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner.

MCR 3.933(D) mirrors the language contained in MCL 712A.14(1) on separation of juveniles from adult prisoners. That rule states:

> "While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner."

"'Legal Custodian' means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state. MCR 3.903(A)(13). "'Guardian' means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202." MCR 3.903(A)(11).

B. Obligations of Officer After Notification or Attempt to Notify Parent, Guardian, or Legal Custodian

MCR 3.933(A)(1)–(3) discuss in detail the procedures that must be followed by an officer following the notification or attempt to notify the juvenile's parent, guardian, or legal custodian. These rules state in part:

> "**(A) Custody Without Court Order.** When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:
>
> (1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;*
>
> (2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or
>
> (3) take the juvenile into custody and submit a petition . . . ."

*See Sections 2.2, above, and 3.4 for limitations on the use of citations and appearance tickets.

C. Factors to Consider When Deciding Whether Juvenile Should Be Released From Custody

MCR 3.933(A)(3)(a)–(b) set out the factors the officer should consider in deciding whether to maintain custody of the juvenile. The officer should take the juvenile into custody and submit a petition under MCR 3.933(A)(3) if either of the following circumstances exist:

> "(a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or
>
> "(b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the juvenile."

MCL 712A.14(2) adds that if the juvenile is not released, the juvenile and his or her parents, guardian, or custodian must immediately be brought before the court for a preliminary hearing. At the conclusion of the preliminary hearing, the court will either authorize the petition to be filed or will dismiss the petition and release the juvenile.

D. Obligation to Notify Family Division If Juvenile Is Not Released From Custody

MCR 3.933(C)(1)–(3) require the officer or agent taking custody of the juvenile to immediately contact the court if:

> "(1) the officer detains the juvenile,
>
> "(2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or
>
> "(3) the parent, guardian, or legal custodian will not agree to [sign a written promise to bring the juvenile to court]."

E. Additional Obligations of Officer If Juvenile Is Not Released

MCR 3.934(A)(1)–(4) set forth four obligations of an officer or agent when a juvenile is apprehended and not released. The officer or agent must:

> "(1) forthwith take the juvenile
>
> (a) before the court for a preliminary hearing, or
>
> (b) to a place designated by the court pending the scheduling of a preliminary hearing;

"(2) ensure that the petition [or a complaint] is prepared and presented to the court;

"(3) notify the parent, guardian, or legal custodian of the detaining of the juvenile, and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;

"(4) prepare a custody statement* for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify."

*See SCAO Form JC 02.

F. Obligations of Officer If Family Division Is Not Open

MCR 3.934(B)(1) states that when a juvenile is apprehended without a court order and the court is not open, the juvenile may be detained pending a preliminary hearing if no parent, guardian, or legal custodian can be located, or if the juvenile or the offense meets the criteria set forth in MCR 3.935(D)(1).

MCR 3.935(D)(1) allows for detention if one or more of the following circumstances are present:

"(a) the offense alleged is so serious that release would endanger the public safety;

"(b) the juvenile charged with an offense that would be a felony if committed by an adult will likely commit another offense pending trial, if released, and

(i) another petition is pending against the juvenile,

(ii) the juvenile is on probation, or

(iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;

"(c) there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

"(d) the home conditions of the juvenile make detention necessary;

> "(e) the juvenile has run away from home;
>
> "(f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a court order; or
>
> "(g) pretrial detention is otherwise specifically authorized by law."

Pretrial detention is specifically authorized by MCL 712A.15(2). Several of this statute's provisions have been incorporated into MCR 3.935(D), but the following provisions have not and therefore also allow for detention pending a hearing:

> "(b) Those who have a record of unexcused failures to appear at juvenile court proceedings.
>
> "(f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation."

Pursuant to MCR 3.934(B)(2), each Family Division must designate a person whom an officer may contact to obtain permission to temporarily detain a juvenile when the court is not open. That rule states:

> "The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing."

Note: "Court intake workers," referees, or detention personnel often make the initial detention determination. Courts may wish to promulgate a local administrative order meeting the requirements of MCR 3.934(B)(2). A copy of the administrative order may then be given to each law enforcement agency in the court's geographic jurisdiction.

2.4 Investigating a Juvenile's Alleged "Drunk Driving" Offense

As noted above in Section 2.2, a person, including a minor, may be taken into custody for an alleged violation of one of several "drunk driving" offenses. The Motor Vehicle Code provides two basic investigatory techniques to determine whether a person has committed a "drunk driving" offense. Those techniques, the preliminary chemical breath analysis and the chemical testing of blood, breath, or urine, are discussed in subsections (A) and (B). Another rarely used technique, obtaining a blood sample for chemical testing, is briefly discussed in subsection (C).*

*For a detailed treatment of the required procedures when an adult is arrested for a "drunk driving" offense, see *Traffic Benchbook—Third Edition*, Volume 3, Chapter 2.

A. Preliminary Chemical Breath Analysis

When a police officer has reasonable cause to suspect that a person was operating a motor vehicle, and that the person's ability to operate the vehicle may be impaired by the consumption of intoxicating liquor, or that a person under 21 years of age is operating a vehicle with any bodily alcohol content, the officer may require the person to submit to a preliminary chemical breath analysis (commonly known as a "preliminary breath test" or "PBT"). MCL 257.625a(2). The police officer may "arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis." MCL 257.625a(2)(a). A person who refuses to submit to a lawful request by a police officer to take a PBT is responsible for a civil infraction. MCL 257.625a(2)(d). Thus, a juvenile suspected of a "drunk driving" offense may be required to submit to a PBT.

In criminal cases, "reasonable cause" is shown by facts leading a fair-minded person of average intelligence and judgment to believe that an incident has occurred or will occur. *People v Richardson*, 204 Mich App 71, 79 (1994). See also *People v Lyon*, 227 Mich App 599, 611 (1998), citing *Illinois v Gates*, 462 US 213, 243 n 13 (1983) ("probable cause" requires "only a probability or substantial chance of criminal activity, not an actual showing of criminal activity").

B. Chemical Testing of Blood, Breath, or Urine

In addition, a juvenile may be required to submit to chemical testing of his or her blood, breath, or urine. MCL 257.625a(2)(c). MCL 257.625c(1), the "implied consent statute," states:

> "(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance

or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

> "(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.*
>
> "(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of section 625."

*See Chapter 6 for a description of some of these offenses.

The initial choice of the type of test that will be offered to the person is made by the arresting officer. *Collins v Secretary of State,* 384 Mich 656, 667 (1971).

The offenses to which the "implied consent statute" applies are:

- OWI under §625(1).
- OWVI under §625(3).
- OWI or OWVI causing death or serious impairment of a body function under §625(4) or (5).
- Zero tolerance violations under §625(6).
- Child endangerment under §625(7).
- OWI under §625(8).
- Operating a commercial motor vehicle and refusing to submit to a preliminary chemical breath analysis under §625a(5).
- Operating a commercial motor vehicle with an unlawful bodily alcohol content under §625m.
- Violation of a local ordinance substantially corresponding to §625(1), (3), (6), or (8), §625a(5) or §625m.
- Felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, if the peace officer had reasonable grounds to believe the driver was operating the vehicle in violation of section 625.

Application of "implied consent" statute to juveniles. In OAG, 1985, No 6321, p 168 (November 8, 1985), the Attorney General addressed two issues relating to the "implied consent" statute:

- Whether a juvenile suspected of drunk driving has the ability to consent to a "Breathalyzer" test or a blood test.

- Whether a police officer who stops and/or arrests a juvenile for a suspected drunk driving offense is obligated to notify the minor's parents and to obtain their consent before the minor can take a breath or blood test.

In answering the first of these questions in the affirmative, the Attorney General provided three reasons:

- The Motor Vehicle Code defines the term "person" to include "every natural person," which clearly includes juveniles, MCL 257.40.

- The "implied consent" statute itself enumerates those persons to whom it does not apply; thus, the Legislature intended the statute to apply to all other persons not enumerated.

- Since "implied consent" provisions have been held to allow the performance of chemical tests on people who are unconscious or otherwise incapable of actually consenting to such tests, Michigan's "implied consent" statute should apply to juveniles.

Note: The opinions of the attorney general "are binding on state agencies for limited purposes only until the courts make a pronouncement on the issue." *People v Waterman,* 137 Mich App 429, 439 (1984). No Michigan appellate court has addressed the applicability of the "implied consent" statute to juveniles. Therefore, the attorney general's opinion explained above does not bind trial courts of this state.

Contacting a juvenile's parent before conducting a chemical test. Because minors may be deemed to have consented to chemical tests under the "implied consent" statute, the police may not be required to obtain a parent's consent prior to administering a chemical test. However, MCL 712A.14(1) requires an officer to immediately attempt to notify a juvenile's parent, guardian, or custodian after apprehending a juvenile.

An adult has no Sixth Amendment right to counsel when deciding whether to submit to a "Breathalyzer" test in cases where the "implied consent" statute applies. *Ann Arbor v McCleary*, 228 Mich App 674, 678 (1998). However, an adult drunk-driving suspect should be given a reasonable opportunity to telephone an attorney before making this decision, as a "commendable police practice." *Hall v Sec'y of State*, 60 Mich App 431, 441 (1975), and *Holmberg v 54–A District Judge,* 60 Mich App 757, 760 (1975).

Even where the police department in question has a policy to allow the suspect to contact an attorney, it is unlikely that most juveniles will be able to avail themselves of it without parental assistance. Moreover, the juvenile may wish

to speak to his or her parent instead of an attorney. No Michigan case has decided whether a juvenile has a right or should be allowed to consult with a parent when deciding whether to submit to a "Breathalyzer" test. Several cases from other states have addressed the issue, however.

- In *Stefano v Comm'r of Public Safety,* 358 NW 2d 83 (Minn App 1984), the arresting officer refused the request of a 17-year-old to speak to his father, who was at the station, before submitting to a chemical test. The minor appealed the revocation of his driver's license, claiming that his refusal to submit to the test was reasonable. At the time of the offense, adults in Minnesota had a limited statutory right to consult with an attorney prior to taking a chemical test. The minor argued that the only meaningful way for a juvenile to exercise a similar right would be to allow the juvenile to consult with his or her parent. The Court disagreed, concluding that the state's "implied consent" statute, which made no distinction by age, should be applied to minors in the same way that it was applied to adults. *Id.* at 84–85.

- In *In re Kean,* 520 A2d 1271 (RI 1987), the Supreme Court of Rhode Island concluded that the presence of a parent was one factor to consider in determining the validity of a juvenile's waiver of a statutory right to refuse to consent to a "Breathalyzer" test. The 17-1/2 year-old juvenile, who had previously been arrested for a drunk-driving offense, refused to call either his parents or an attorney prior to administration of the test. The arresting officer spoke to the juvenile's father on the telephone, but the father was not present when the juvenile signed a consent form for the "Breathalyzer" test. *Id.* at 1272–73. After noting that adults have no constitutional right to counsel at the "Breathalyzer stage" of a proceeding, the Court held that a totality-of-the-circumstances test should be applied in evaluating the admissibility of test results obtained in these circumstances. *Id.* at 1276.

- In *Olson v Dep't of Transportation,* 523 NW 2d 258, 259 (ND 1994), the Supreme Court of North Dakota held that "a minor taken into custody for drunk driving has a qualified statutory right to have his or her parent contacted, if reasonable under the circumstances, and read the "implied consent" advisory, prior to administration of a chemical test." After taking a 17-year-old into custody for drunk driving, police officers unsuccessfully attempted to contact his parents by telephoning and going to their residence. Just prior to taking a blood sample from the minor, an officer spoke to the minor's mother but did not advise her of the minor's rights under the state's "implied consent" law. The minor refused to submit to the blood test but, after consulting by phone with an attorney, agreed to submit to a urine test. That test was refused because only two or three minutes remained in the permissible two-hour testing period. *Id.* In reversing the decision

to revoke the minor's license, the North Dakota Supreme Court construed the following statutory language:

> "When a child is taken into custody for violating [a drunk driving law], the law enforcement officer shall diligently attempt to contact the child's parent or legal guardian to explain the cause for the custody and the "implied consent" chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter." *Id.* at 260.*

The Court concluded that the statute showed a clear legislative intent that the parent be involved in the child's decision to take or refuse a chemical test. Thus, the parent must be advised of the child's rights under the "implied consent" law in order to participate meaningfully in the child's decision. *Id.*

*The statute in question in this case, N.D. Cent. Code §39-20-01 (1999), has subsequently been amended to eliminate the requirement that the parent be advised of rights under the state's "implied consent" law.

- In *Delaware v Andrew J DiM,* 1986 Del. Fam. Ct. Lexis 211 (1986), a trial court refused to suppress results of a chemical breath test performed on a minor, where the minor's parents were not contacted until after the test was completed. At the time of the case, Delaware had in place a statute and court rule, similar to those currently in place in Michigan,* that required a police officer who takes a minor into custody to immediately notify or attempt to notify the minor's parents. The court noted that the delay in contacting the minor's parents was only one hour and examined the validity of the minor's consent using a totality-of-the-circumstances analysis.

*See Section 2.2(A), above, for a discussion of these provisions.

The language of Michigan's "implied consent" statute does not indicate an intent by the Legislature that police officers treat persons under 17 years of age differently than adults when asking them to submit to chemical tests. However, statutes and court rules governing cases involving juveniles provide for different treatment of juveniles. In particular, the presence and participation of a parent is requested at several key points in delinquency proceedings. The following are submitted as "best practice" guidelines for officers who take a juvenile into custody for a drunk driving offense:

- After taking the juvenile into custody, immediately attempt to notify the juvenile's parent, guardian, or legal custodian by telephone.

- If you speak with the juvenile's parent, guardian, or legal custodian, notify them of the juvenile's location, the reason for the juvenile's custody, and the juvenile's rights and procedures under the "implied consent" statute. Also, tell the parent, guardian, or legal custodian about any departmental procedures governing

chemical testing (e.g., any time requirements for administering a "Breathalyzer" test).

- Allow the juvenile the opportunity to consult with the parent, guardian, or legal custodian, either by telephone, in person (if he or she arrives within a reasonable time given the time requirements for administration of the test), or both.

- If you are unsuccessful in contacting the juvenile's parent, guardian, or legal custodian after a reasonable time given the time requirements for administration of the test, or if the parent, guardian, or legal custodian refuses to consult with the juvenile, follow the normal procedures for cases involving adults.

- If the juvenile asks for the opportunity to consult with an attorney, allow the juvenile to do so within the departmental rules applicable to adults in such circumstances.

Advice of rights. Under MCL 257.625a(6)(b), a person arrested for an offense described in §625c(1) must be advised of all of the following:

- if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing also administer one of the chemical tests;

- the results of the test are admissible in a judicial proceeding as provided under the Motor Vehicle Code and will be considered with other admissible evidence in determining the defendant's guilt or innocence;

- he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request;

- if he or she refuses the request of a peace officer to take a chemical test, a test shall not be given without a court order, but the peace officer may seek to obtain a court order; and

- refusing a peace officer's request to take a chemical test will result in suspension of his or her operator's or chauffeur's license and vehicle group designation or operating privilege and in the addition of six points to his or her driving record.

In addition to the statutory notices that must be given under §625a(6)(b), persons arrested for drunk driving must be informed of any police administrative rules that materially affect their decisions regarding chemical tests. *People v Castle*, 108 Mich App 353, 357 (1981). The Department of State Police has promulgated uniform rules for the administration of chemical tests under §625a(6). These can be found at 1994 AACS, R 325.2651 et seq. and 1993 AACS, R 325.2671 et seq.

Methods for collecting a sample. A sample of urine or breath may be taken and collected in a reasonable manner, but a sample of blood must be withdrawn only by a licensed physician or a person operating under the delegation of a licensed physician pursuant to MCL 333.16215. MCL 257.625a(6)(c). A chemical test must be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in §625c(1). MCL 257.625a(6)(d).

Parental consent to the withdrawal of a blood sample is recommended but its absence does not affect the validity of a minor's consent to the procedure. In most circumstances, parents must consent to non-emergency medical procedures performed on their minor children. *Zoskie v Gaines,* 271 Mich 1, 10 (1935). However, emancipation occurs by operation of law "for the purpose of consenting to routine, nonsurgical medical care or emergency medical treatment of a minor, where the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located." MCL 722.4(2)(d).

A person who submits to a chemical test at an officer's request must be given a reasonable opportunity to have a person of his or her own choosing administer one of the chemical tests within a reasonable time after his or her detention. The test results are admissible and will be considered with other admissible evidence in determining the person's guilt or innocence. MCL 257.625a(6)(d). Because a juvenile is unlikely to be able to avail himself or herself of this statutory right without guidance from an adult, it is recommended that a parent or guardian be notified of the rights and procedures listed in MCL 257.625a(6)(b). Ideally, the parent or guardian would be present prior to the administration of the test.

If the driver of a vehicle involved in an accident is taken to a medical facility and a sample of blood is withdrawn for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person was offered or refused a chemical test. The medical facility or person analyzing the sample must disclose the results to the prosecuting attorney upon request for use in a criminal prosecution. MCL 257.625a(6)(e).

Upon obtaining the results of the chemical analysis of a driver's blood, breath, or urine, the officer must comply with MCL 257.625g (notification of Secretary of State, destruction of license or permit, and issuance of temporary license or permit).

C. Use of Search Warrants to Obtain Blood Samples

The use of search warrants for the withdrawal of blood samples is one of the tools available to Michigan law enforcement officers and courts to investigate and adjudicate "drunk driving" offenses. Although this procedure is rarely

used in cases involving juveniles, either because juveniles submit to "Breathalyzer" tests, or because of a local police or court policy forbidding the practice, there is no legal impediment to the court's issuing a search warrant in an appropriate case.

Usually, when a person refuses to submit to a chemical test under the "implied consent" statute, the police officer requests a search warrant to conduct a blood test. MCL 257.625a(6)(b)(*iv*), MCL 257.625d(1), and MCL 780.651(3). The results of a preliminary chemical breath analysis may be used to establish the requisite probable cause for a search warrant to obtain a blood or urine sample for a chemical test. *People v Tracy,* 186 Mich App 171, 178–79 (1990).

Family Division judge's authority to issue a search warrant. MCR 3.922(A)(1)(h) contemplates the issuance of search warrants in juvenile delinquency cases. That rule allows discovery of "all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories." There is general authority for circuit court judges to issue search warrants. MCL 780.651(2)(a) and (3) specify that judges may issue search warrants. MCL 780.651 also authorizes "magistrates" to issue search warrants. MCL 761.1(f) defines "magistrate" as a district court or municipal court judge, and goes on to state the following:

> "This definition does not limit the power of a justice of the supreme court, *a circuit judge,* or a judge of a court of record having jurisdiction of criminal cases under this act, *or deprive him or her of the power to exercise the authority of a magistrate."* [Emphasis added.]

District court or municipal court judges may also be assigned to sit as Family Division judges to hear matters involving juveniles. MCL 600.1517, MCL 600.225, and MCR 8.110(C)(3)(g).

Circuit court referees have no authority to issue search warrants. See MCL 780.651, MCL 761.1(f), MCL 712A.10(1), and MCR 3.913.

2.5 Notice and Custody Requirements When a Juvenile Is Charged With Illegal Transport or Possession of Alcoholic Liquor

*See Chapter 6 for a description of the offenses treated in this section.

MCL 257.624b(1) prohibits the transport or possession of alcoholic liquor in a motor vehicle by a person who is either the driver or passenger and is under 21 years old, unless required by the person's employment.* If the person who allegedly violated this statute is less than 18 years old, the arresting officer must notify the minor's parent or parents, guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. This notice must be given within 48 hours after the officer determines that the person is less than 18 years old and may be by any means reasonably calculated to give

prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. MCL 257.624b(5).

A police officer may obtain custody of a person for a violation of MCL 436.1703 (minor purchasing, consuming, or possessing alcoholic liquor or having any bodily alcohol content). An officer who witnesses a violation of this statute may stop and detain the person, obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket under MCL 764.9c.* MCL 436.1705.

*See Section 3.4 for discussion of appearance tickets.

If a police officer has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content, the officer may require the minor to submit to a preliminary chemical breath test (PBT). The police officer may arrest a minor based on the results of the PBT. Refusal of a minor to submit to a PBT constitutes a civil infraction. MCL 436.1703(6).

> **Note:** A federal district court in Michigan has found that a local ordinance substantially similar to MCL 436.1703(6) violated the Fourth Amendment to the U.S. Constitution. *Spencer v Bay City,* 292 F Supp 2d 932 (ED Mich, 2003).

If the minor is less than 18 years old and unemancipated, the arresting officer must notify the minor's parent or parents, guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. This notice must be given within 48 hours after the officer determines that the person is less than 18 years old and may be by any means reasonably calculated to give prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. If the minor is unemancipated, less than 17 years old, and incarcerated for a violation of MCL 436.1703(1), the minor's parents or legal guardian must be notified immediately. MCL 436.1703(7).

2.6 Fingerprinting Juveniles

The Department of State Police maintains criminal identification and criminal history information on juveniles "arrested" and adjudicated or convicted of certain offenses in Michigan. MCL 28.241a(g) ("juvenile history record information" includes name, date of birth, fingerprints, photographs (if available), personal description, and arrests and convictions) and MCL 28.242(1).

When a juvenile is arrested for a "juvenile offense," other than a misdemeanor punishable by 92 days' imprisonment or less, a fine of $1,000.00, or both, the arresting law enforcement agency must take the juvenile's fingerprints and send them to the Department of State Police within 72 hours. MCL 28.243(1). "'Juvenile offense' includes an offense committed by a juvenile that, if committed by an adult, would be a felony or a misdemeanor. MCL 28.241(h). Misdemeanors include violations of local ordinances that substantially correspond to a state law. MCL 28.241(j)(*ii*). However, a juvenile's

fingerprints need not be taken and forwarded to the department solely for a violation of MCL 257.904(3)(a) (first offense of driving with a suspended or revoked license). MCL 28.243(3).

The Family Division must permit fingerprinting of a juvenile as required by MCL 712A.11(5) and MCL 712A.18(10). MCR 3.936(A). MCL 712A.11(5) states as follows:

*SCAO Form JC 02 (complaint) contains a checkbox to notify the court that a juvenile's fingerprints have been taken.

> "When a petition is authorized, the court shall examine the court file* to determine if a juvenile has had fingerprints taken as required under [MCL 28.243]. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:
>
> > (a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the juvenile so the juvenile's fingerprints can be taken.
> >
> > (b) Order the juvenile committed to the custody of the sheriff for the taking of the juvenile's fingerprints."

Similarly, MCL 712A.18(10) requires the court to examine the court file before the court enters an order of disposition or judgment of sentence to verify that the juvenile has been fingerprinted. That statutory provision states as follows:

> "The court shall not enter an order of disposition for a juvenile offense as defined in [MCL 28.241a], or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken and forwarded as required by [MCL 28.243] . . . ."

MCR 3.936(B) and MCR 3.943(E)(4) contain substantially similar requirements. MCR 3.936(B)(1)–(2) state that if the juvenile has not been fingerprinted when a petition was authorized or before disposition, the judge or referee must:

> "(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken; or
>
> "(2) issue an order to the sheriff's department to apprehend the juvenile and to take the fingerprints of the juvenile."

Permitted Procedures for Adjudicating Criminal Traffic Offenses

3

In this chapter. . .

This chapter deals with the procedural avenues open to the juvenile and the court when the juvenile is charged with a criminal traffic violation. For a discussion of jurisdiction and procedure when a juvenile is cited for a civil infraction, see Section 1.2. If a juvenile is charged with a criminal traffic offense, the case may be handled in one of the following ways:

- the case may be handled under the Juvenile Diversion Act;
- if the offense is contained in the Motor Vehicle Code, the case may be handled informally under §2b of the Juvenile Code;* *See Section 3.1, below.
- the case may be placed on the consent calendar;* *See Section 3.2, below.
- the case may be placed on the formal calendar and handled as a delinquency case:
  - — if the juvenile fails to comply with a diversion agreement;
  - — if the juvenile fails to fulfill conditions after the case is placed on the consent calendar;
  - — if the offense is not contained in the Motor Vehicle Code; or
  - — if the court determines that it is in the best interests of the juvenile and the public.* *See Sections 3.2–3.3, below.

This chapter focuses on the procedures required by MCL 712A.2b to process cases involving violations of the Motor Vehicle Code. It also discusses use of the consent calendar to process traffic law violations. For detailed treatment of the required procedures under the Juvenile Diversion Act, MCL 722.821 et seq., and in delinquency cases, see, generally, Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003).

3.1 Special Procedures Are Permitted When a Juvenile Is Charged With a Violation of the Motor Vehicle Code

The Juvenile Code provides special procedures that apply when a juvenile is charged with a violation of the Motor Vehicle Code or an ordinance substantially corresponding to such a violation. MCL 712A.2b states:

> "When a juvenile is accused of an act that constitutes a violation of the Michigan Vehicle Code, . . . or a provision of an ordinance substantially corresponding to any provision of [the Michigan Vehicle Code], the following procedure applies, *any other provision of this chapter notwithstanding. . . .*" [Emphasis added.]

The procedures listed in MCL 712A.2b(a)–(e) are to be used instead of the procedures contained in other provisions of the Juvenile Code when the juvenile is charged with a violation of the Motor Vehicle Code or an ordinance substantially corresponding to a provision of the Motor Vehicle Code. These procedures are as follows:

*See Section 3.4, below.

> "(a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by [MCL 257.728].*

*See Section 3.9, below.

> "(b) The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.*

*See Chapter 4.

> "(c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under [MCL 712A.18].*

*See Section 5.1(A).

> "(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with [MCL 257.732].*

> "(e) This section does not limit the court's discretion to restrict the driving privileges of a juvenile as a term or condition of probation."*

*See Section 4.8.

Several procedural protections afforded by the Juvenile Code to juveniles charged with offenses not contained in the Motor Vehicle Code are omitted from the procedures listed above. For example, no provision is made for the appointment of counsel as required by MCL 712A.17c(1)–(3). Formal notice is not required as in MCL 712A.12 and 712A.13 and related court rules. The language of §2b(c) ("If after hearing the case the court finds the accusation to be true. . .") suggests that a "bench trial" will occur if the juvenile contests the charges, rather than a jury trial. Under MCL 712A.17(2), any "interested person" may demand a jury trial.

3.2 Use of the Consent Calendar and the Formal Calendar

The consent and formal calendars may also be used in cases in which the juvenile is charged with a criminal traffic offense. MCR 3.903(A)(5) defines a "delinquency proceeding" as a proceeding involving an offense by a juvenile, and MCR 3.903(B)(3) defines "offense by a juvenile" to include a violation of a traffic law. Therefore, although §2b expressly excludes the applicability of other provisions of *the Juvenile Code* to cases involving an alleged violation of the Motor Vehicle Code, these two procedural mechanisms contained in subchapter 3.900 of the Michigan Court Rules may be utilized by the court in juvenile traffic cases.

Consent calendar. The term "consent calendar" is not defined in MCR 3.903, the court rule which contains the definitions applicable to juvenile proceedings. It is a "summary initial proceeding" provided by court rule that allows for informal treatment of appropriate cases. If the court, juvenile, and the juvenile's parent, guardian, or legal custodian agree to place the case on the court's consent calendar, the juvenile waives certain rights, including:

- formal notice of charges;
- the right to an appointment of an attorney at public expense;
- the right to jury trial;
- the right to a trial before a judge;
- the presumption of innocence;
- the presentation of proof beyond a reasonable doubt;
- the right to testify on the juvenile's own behalf;
- the privilege against self-incrimination (and the right to remain silent);

- the right to present witnesses;
- the right to confront and cross-examine the juvenile's accusers; and
- the right to use the subpoena power of the court to compel attendance of witnesses.

See MCR 3.932(C)(1), 3.935(B)(4)(a)–(c), and 3.942(C) for a list of rights of a juvenile when his or her case is placed on the formal calendar.

MCR 3.932(C) provides the rules governing the consent calendar. That rule states:

> "(C) **Consent Calendar.** If the court receives a petition, citation, or appearance ticket and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may proceed on the consent calendar without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agrees to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.
>
> (1) **Notice.** Formal notice is not required for cases placed on the consent calendar except as required by article 2 of the Crime Victim's Rights Act, MCL 780.781 *et seq.**
>
> (2) **Plea; Adjudication.** No formal plea may be entered in a consent calendar case, and the court must not enter an adjudication.
>
> (3) **Conference.** The court shall conduct a consent calendar conference with the juvenile and parent, guardian, or legal custodian to discuss the allegations. The victim may, but need not, be present.
>
> (4) **Case Plan.** If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan.
>
> (5) **Custody.** A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.

*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003), Section 4.3, for discussion of notice and other requirements under the CVRA.

> (6) **Disposition.** No order of disposition may be entered by the court in a case placed on the consent calendar.
>
> (7) **Closure.** Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.
>
> (8) **Transfer to Formal Calendar.** If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge."

Prior to a 2003 amendment of MCR 3.932, the Court of Appeals approved use of the consent calendar to dispose of criminal traffic violations. In *In re Neubeck,* 223 Mich App 568, 571–72 (1997), the Court of Appeals noted that under former MCR 5.932(B)(2), a trial court was required to comply with reporting or "abstracting" requirements under MCL 712A.2b(d) and MCL 257.732 of the Motor Vehicle Code in cases placed on the consent calendar. However, under current MCR 3.932(C)(7), a court is prohibited from sending an abstract of a criminal traffic violation "to any other agency," including the Secretary of State.

If the case is transferred to the formal calendar, the court must inform the juvenile of his or her right to an attorney, to trial by judge or jury, and that any statement made by the juvenile may be used against him or her. See *In re Chapel,* 134 Mich App 308, 312–13 (1984) (full panoply of rights under court rules vests when case is placed on formal calendar).

Formal calendar. MCR 3.903(A)(10) defines formal calendar as "judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding . . . ."

The court may authorize a petition to be filed and docketed on the formal calendar if it appears that formal court action is in the best interest of the juvenile and the public. MCR 3.932(D). The court shall not authorize a delinquency petition, however, unless the prosecuting attorney has approved submitting the petition to the court. MCR 3.932(D) and MCL 712A.11(2).

The juvenile must be advised of his or her right to counsel when the court is proceeding on the formal calendar. MCL 712A.17c(1) and MCR 3.915(A)(1).

"At any time before disposition, the court may transfer the matter to the consent calendar." MCR 3.932(D).

3.3 Required Procedures for Traffic-Related Offenses Contained in the Michigan Penal Code

In addition to those contained in the Motor Vehicle Code, some criminal traffic offenses are contained in the Penal Code, MCL 750.1 et seq. If the traffic offense alleged is contained in the Penal Code, the court should use the same procedures as it would use in any other delinquency case. Also, a prosecuting attorney may request that the Family Division "designate" a case in which any criminal offense is alleged for criminal trial within the Family Division. See MCL 712A.2d(2). For a detailed discussion of the required procedures in delinquency and "court-designated" cases, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003).

3.4 Requirements for Citations or Appearance Tickets

MCL 712A.2b(a) states that "[n]o petition shall be *required*, but the court *may* act upon the written notice to appear given the accused juvenile as required by [MCL 257.728]." [Emphasis added.] MCL 257.728(1)–(3) state as follows:

*See Section 2.2 for discussion of these statutory provisions.

> "(1) When a person is arrested without a warrant for a violation of this act punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of this act and punishable as a misdemeanor, under conditions not referred to in sections 617, 619, and 727(1), (2), and (3),* the arresting officer shall prepare, as soon as possible and as completely as possible, an original and 3 copies of a written citation to appear in court containing the name and address of the person, the violation charged, and the time and place when and where the person shall appear in court. The officer shall inform the offender of the violation and shall give the second copy of the citation to the alleged offender. If the arrested person demands, he or she shall be taken before a magistrate or probate court as provided in section 727 in lieu of being given the citation.
>
> "(2) The time specified in the citation to appear shall be within a reasonable time after the arrest.
>
> "(3) The place specified in the citation to appear shall be before a magistrate or probate court within the county in

> which the violation charged is alleged to have been committed and who has jurisdiction of the violation."

MCL 257.728(8) similarly allows issuance of a citation or appearance ticket following an accident:

> "A police officer may issue a citation to a person who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a misdemeanor under the act in connection with the accident. The officer shall prepare an original and 3 copies of the citation, setting forth the name and address of the person, the violation that may be charged against the person, and the time and place of the appearance of the person in court. The citation shall inform the person of the office, bureau, or department to which requests for a change or adjournment of the court date may be made."

The applicable court rules conform to these provisions. Although MCR 3.931(A) states that "[a]ny request for court action against a juvenile must be by written petition," MCR 3.931(C) qualifies this by providing that a citation or appearance ticket may be used to initiate proceedings involving certain charges. MCR 3.931(C) states as follows:

> "(1) A citation or appearance ticket may be used to initiate a delinquency proceeding if the charges against the juvenile are limited to:
>
> > (a) violations of the Michigan Vehicle Code, or of a provision of an ordinance substantially corresponding to any provision of that law, as provided by MCL 712A.2b.
> >
> > (b) offenses that, if committed by an adult, would be appropriate for use of an appearance ticket under MCL 764.9c.
>
> "(2) The citation or appearance ticket shall be treated by the court as if it were a petition, except that it may not serve as a basis for pretrial detention."

MCL 764.9c(1) permits a police officer to issue an appearance ticket for misdemeanors and ordinance violations for which the maximum penalty does not exceed 93 days in jail, a fine, or both.

Where a citation or appearance ticket is issued and a juvenile is released, MCR 3.933(A)(1) provides that a date and time for a juvenile's appearance may be set by the court. This will occur after the court receives the original copy of the citation.

Citation means "a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited." MCL 257.727c(1). The Michigan Uniform Traffic Citation, issued by the Michigan State Police, has four parts:

- The original, or court copy, which is filed with the court.
- The police copy, which the citing officer retains.
- The misdemeanor copy, which is given to the defendant if the charged offense is a misdemeanor.
- The civil infraction copy, which is given to the defendant if the charged offense is a civil infraction.

MCL 257.727c(1)(a)–(d). An appearance ticket is similar to a citation. See MCL 764.9f for a description.

3.5 When a Petition Must Be Filed

A petition is not required to be filed when a violation of the Motor Vehicle Code is alleged. MCL 712A.2b(a). However, a petition may be filed alleging a traffic violation, and a petition must be filed when the offense alleged is a felony, or if pretrial detention is requested. MCR 3.931(C)(2).

*See Section 3.12.

A petition must also be filed before the court may issue an order to obtain custody of a juvenile for a failure to appear. MCR 3.933(B).*

MCL 712A.11(2) and MCR 3.914(B)(1) provide that only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within MCL 712A.2(a)(1) (criminal offenses). MCR 3.914(A) and 3.914(B)(2), and MCL 712A.17(4) provide that when a criminal offense is alleged, the prosecuting attorney must appear for the people if the proceeding requires a hearing and the taking of testimony. If the court requests, the prosecutor shall review petitions for legal sufficiency and appear for the people at a hearing. MCR 3.914(A).

The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 3.903(B)(4). See also MCL 257.45a for a similar definition under the Motor Vehicle Code.

A petition must be verified, must set forth plainly the facts that bring the juvenile within the Juvenile Code, and may be upon information and belief. MCL 712A.11(3). The petition must contain the following information, if known, or if not known to the petitioner, be stated as unknown. MCL

712A.11(4) and MCR 3.931(B). MCR 3.931(B)(1)–(8) require a petition to contain the following information:

> "(1) the juvenile's name, address, and date of birth, if known;
>
> "(2) the names and addresses, if known, of
>
> (a) the juvenile's mother and father;
>
> (b) the guardian, legal custodian or person having custody of the juvenile, if other than a mother or father;
>
> (c) the nearest known relative of the juvenile, if no parent, guardian or legal custodian can be found, and
>
> (d) any court with prior continuing jurisdiction;
>
> "(3) sufficient allegations that, if true, would constitute an offense by the juvenile;
>
> "(4) a citation to the section of the Juvenile Code relied upon for jurisdiction;
>
> "(5) a citation to the federal, state, or local law or ordinance allegedly violated by the juvenile;
>
> "(6) the court action requested;
>
> "(7) if applicable, the notice required by MCL 257.732(7),* and the juvenile's Michigan driver's license number; and
>
> "(8) information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending."

*See Section 3.7, below.

A petition may be amended at any stage of the proceedings as the ends of justice require. MCL 712A.11(6).

3.6 Requirements Under the Crime Victim's Rights Act

If a felony or "serious misdemeanor" is alleged, the investiating law enforcement agency must file with the charging document a separate list of the names, addresses, and telephone numbers of each victim. This separate list is not a matter of public record. MCL 780.784. See also MCR

3.903(A)(3)(a)(ii) (the definition of "confidential file" includes this separate statement of victims).

Pursuant to MCL 780.783a, if the complaint, petition, appearance ticket, traffic citation, or other charging instrument charges one of several listed "serious misdemeanors," or a violation of a local ordinance substantially corresponding to one of these offenses, the law enforcement officer or prosecutor must state on the charging instrument "that the offense resulted in damage to another individual's property or physical injury or death to another individual." This statement must be included in the charging document because Article 2 of the Crime Victim's Rights Act (the "juvenile article") only applies to these listed offenses when property damage, physical injury, or death results.

MCL 780.781(1)(f)(*iii*)–(*v*) contain the offenses to which this requirement applies:

- leaving the scene of a personal-injury accident, MCL 257.617a;
- operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625;
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701;* and
- operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3).

*The CVRA applies to this offense only if physical injury or death results; it does not apply if the offense results in property damage.

3.7 Required Notice When Juvenile Is Charged With a "Felony in Which a Motor Vehicle Was Used"

MCR 3.931(B)(7) requires a petition to contain the notice provision contained in MCL 257.732(7),* if applicable. MCL 257.732(8) states that when "a juvenile is accused of an act, the nature of which constitutes a felony in which a motor vehicle was used, other than [certain felonies listed below], the prosecuting attorney or family division of circuit court shall include the following statement on the petition filed in the court:

> 'You are accused of an act the nature of which constitutes a felony in which a motor vehicle was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a motor vehicle was used, as defined in [MCL 257.319], your driver's license shall be suspended by the secretary of state.'"

*MCL 257.732(7) has been redesignated MCL 257.732(8).

"Felony in which a motor vehicle was used" is defined as a felony during which the juvenile operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property, and one or more of the following circumstances existed:

> "(*i*) The vehicle was used as an instrument of the felony.
>
> "(*ii*) The vehicle was used to transport a victim of the felony.
>
> "(*iii*) The vehicle was used to flee the scene of the felony.
>
> "(*iv*) The vehicle was necessary for the commission of the felony." MCL 257.319(2)(d)(*i*)–(*iv*).

Under MCL 257.732(8), the following felonies or attempts to commit these felonies are *excluded* from the definition of "felony in which a motor vehicle was used":

- taking possession of and driving away a motor vehicle, MCL 750.413;
- use of a motor vehicle without authority but without intent to steal, MCL 750.414;
- failure to obey a police or conservation officer's direction to stop, MCL 750.479a(2) or (3) and MCL 257.602a(2) or (3);
- felonious driving, MCL 752.191 or MCL 257.626c;
- causing injury to a work zone worker, MCL 257.601(b)(2);
- causing injury to emergency response personnel in the immediate area of a stationary authorized emergency vehicle, MCL 257.653a(3);
- negligent homicide with a motor vehicle, MCL 750.324;
- manslaughter with a motor vehicle, MCL 750.321;
- murder with a motor vehicle, MCL 750.316 (first-degree murder) and MCL 750.317 (second-degree murder);
- minor in possession, MCL 436.1703;
- false bomb threat, MCL 750.411a(2);
- fraudulently altering or forging documents pertaining to motor vehicles, MCL 257.257;
- perjury or false certification to Secretary of State, MCL 257.903;
- malicious destruction of trees, grass, shrubs, etc., with a motor vehicle, MCL 750.382(1)(c) or (d);

- failing to stop and disclose identity at the scene of an accident, MCL 257.617 and MCL 257.617a;
- certain "drunk driving" offenses; and
- a controlled substance violation under MCL 333.7401–333.7461, or 333.17766a, for which the defendant receives a minimum sentence of less than one year.

See MCL 257.732(4) and MCL 257.319 for the statutory sections that list these offenses. These offenses are excluded from the notice requirement of MCL 257.732(8) because the penalties for all of these listed offenses already require mandatory license suspension upon conviction.

3.8 Preliminary Inquiries

MCR 3.903(A)(22) defines "preliminary inquiry" as an informal review by the court to determine appropriate action on a petition. Authority for the Family Division to conduct a preliminary inquiry when a criminal violation is alleged is contained in MCR 3.932(A). This court rule provides that when a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. At a preliminary inquiry, the court examines the best interest of the juvenile and public to determine which of the following courses of action to take:

- denying authorization of the petition or dismissing the petition;
- before authorizing the petition, referring the matter to a public or private agency pursuant to the Juvenile Diversion Act;
- directing that the parent, guardian, or legal custodian and juvenile appear so that the matter can be handled through further informal inquiry;
- without authorizing the filing of the petition, proceeding on the consent calendar; or
- after authorizing the filing of the petition, proceeding on the formal calendar.

The court may assign a referee to conduct a preliminary inquiry. MCR 3.913(A)(1). MCR 3.913(A)(2) and MCL 712A.10 do not require referees who conduct preliminary inquiries to be licensed attorneys.

Because a preliminary inquiry is not a hearing or proceeding on the formal calendar, no record of a preliminary inquiry is required to be made. MCR 3.925(B). However, a preliminary inquiry must be conducted on the record if an offense enumerated in MCL 780.781(1)(f) of the Crime Victim's Rights Act is alleged. MCR 3.932(A). MCL 780.781(1)(f) lists felonies and "serious misdemeanors."*

MCL 257.727c(1)(a) requires the officer issuing a citation to file the original copy of the citation (the complaint or notice to appear) in the court in which the appearance is to be made. MCR 3.933(A)(1) provides that the date and time for the juvenile's appearance will be set by the court. The court may examine the citation filed by the officer at a preliminary inquiry, and, following the preliminary inquiry, set a date and time for the juvenile's appearance and notify the juvenile and his or her parent, guardian, or legal custodian.

*See Section 3.6, above, for a list of traffic-related "serious misdemeanors." For other requirements of the CVRA, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003), Section 4.3.

3.9 Notification of Parent, Guardian, or Custodian

MCL 712A.2b(b) states:

> "The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay. However, the court may extend the time for that appearance.

The procedures outlined in MCL 712A.12 and 712A.13 and MCR 3.920 and 3.921 regarding summonses and notices of hearing do not apply when the juvenile is charged with a violation of the Motor Vehicle Code. See MCL 712A.2b. Thus, it appears that the court may inform the juvenile's parent, guardian, or custodian of a hearing in any reasonable manner.

3.10 Preliminary Hearings

The court must hold a preliminary hearing if a juvenile is in custody or the petition requests detention. MCL 712A.14(2) and MCR 3.932(A). For the required procedures at preliminary hearings, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003), Sections 5.6–5.16.

3.11 Procedures for the Factfinding Hearing on an Alleged Violation of the Motor Vehicle Code

The court may assign an attorney-referee to preside over a hearing under MCL 712A.2b regarding a violation of the Motor Vehicle Code. MCR 3.913(A)(1),

(A)(2)(a). Because such a hearing is not on the formal calendar, a juvenile does not have a right to demand that a judge preside over the hearing. MCL 712A.2b and MCR 3.903(A)(10) and 3.912(A).

The subsection of §2b that pertains to the factfinding hearing on such a violation, MCL 712A.2b(c), states:

> "If after hearing the case the court finds the accusation to be true, the court may dispose of the case under section 18 of this chapter."

The standard of proof to be applied at such a hearing is unclear. See MCR 3.942(C), which states that at a trial in a formal delinquency proceeding, "[t]he Michigan Rules of Evidence and the standard of proof beyond a reasonable doubt apply. . . ." For further discussion of the procedures required at a delinquency trial, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings (Revised Edition)* (MJI, 2003), Chapter 9.

3.12 Required Procedures Following a Failure to Respond to a Motor Vehicle Violation

MCR 3.931(D) prescribes the procedures to follow when a juvenile fails to respond to a "motor vehicle violation." That rule states as follows:

> **"(D) Motor Vehicle Violations; Failure to Appear.** If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court
>
> > (1) must initiate the procedure required by MCL 257.321a for the failure to answer a citation, and
> >
> > (2) may issue an order to apprehend the juvenile after a petition is filed with the court."

MCL 257.321a(1) provides that a person who fails to answer a citation or a notice to appear in court, or who fails to comply with an order or judgment of the court (including paying all fines, costs, fees, and assessments), is guilty of a misdemeanor.

In cases other than those involving the offenses listed below, the court must wait at least 28 days after the person fails to appear or comply with the order or judgment. The court must then mail notice by mail to the person's last-known address that if the person fails to appear within 14 days, the Secretary of State will suspend the person's operator's or chauffeur's license. MCL 257.321a(2). If the person fails to comply with this notice, the court must notify the Secretary of State within 14 days, who suspends the person's license. *Id.*

If the person is charged with or convicted of a violation of any of the following offenses, the court must immediately mail the required notice. The person then has only seven days in which to appear. MCL 257.321a(3)–(4). If the person fails to comply with this notice, the court must immediately notify the Secretary of State, who suspends the person's license. *Id.* The offenses are:

- driving under the influence of alcoholic liquor and/or a controlled substance, MCL 257.625(1)(a), or a local ordinance substantially corresponding to this section;
- driving with an unlawful bodily alcohol content, MCL 257.625(1)(b), or a local ordinance substantially corresponding to this section;
- knowingly permitting a person who is under the influence of alcoholic liquor and/or a controlled substance to drive, MCL 257.625(2), or a local ordinance substantially corresponding to this section;
- driving while visibly impaired, MCL 257.625(3), or a local ordinance substantially corresponding to this section;
- driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing death, MCL 257.625(4);
- driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing serious impairment of a body function, MCL 257.625(5);
- person under 21 years of age driving with any bodily alcohol content, MCL 257.625(6), or a local ordinance substantially corresponding to this section;
- driving in violation of §625(1), (3), (4), (5), or (6), while a person less than 16 years of age is occupying the vehicle, MCL 257.625(7);
- driving with any amount of certain controlled substances in the body, MCL 257.625(8), or a local ordinance substantially corresponding to this section;
- transporting or possessing alcoholic liquor in open container, MCL 257.624a, or a local ordinance substantially corresponding to this section;
- transport or possession of alcoholic liquor in a motor vehicle by a person under 21 years old, unless required by the person's employment, MCL 257.624b, or a local ordinance substantially corresponding to this section; and

- purchase, consumption, or possession of alcoholic liquor by person under age 21, MCL 436.1703, or or a local ordinance substantially corresponding to this section.

The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who has failed to appear for a hearing. MCL 712A.2c.

3.13 Driver's License Clearance Fees

MCL 257.321a(5)(a)–(b) state:

> "(5) A suspension imposed under subsection (2) or (3)[*] remains in effect until both of the following occur:
>
> (a) The secretary of state is notified by each court in which the person failed to answer a citation or notice to appear or failed to pay a fine or cost that the person has answered that citation or notice to appear or paid that fine or cost.
>
> (b) The person has paid to the court a $45.00 driver license clearance fee for each failure to answer a citation or failure to pay a fine or cost."

*Subsection (4) also provides for suspension of drivers' licenses for certain offenses. See Section 2.8, immediately above. It is unclear whether the suspension may be cleared for those violations in the same manner as for those violations in subsections (2) and (3).

When the juvenile has appeared before the court, and all matters relating to the violation or to the noncompliance are resolved, and the juvenile has paid to the court the $45.00 driver's license clearance fee, the court shall give to the juvenile a copy of the information being sent to the Secretary of State. Upon showing that copy, a person shall not be arrested or issued a citation for driving on a suspended license on the basis of any matter resolved, even if the information sent to the Secretary of State has not been received or recorded. MCL 257.321a(10).